

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 9

In the Matter of

SENIOR RESOURCE CONNECTION

Employer

and

Case 9-RC-17237

UNITED FOOD AND COMMERCIAL WORKERS  
UNION, LOCAL 1099

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The Employer, a nonprofit corporation, with its main facility located at 105 South Wilkinson Street, Dayton, Ohio, is engaged in providing food services to senior and disabled citizens in and around Dayton. The Employer employs approximately 60 employees in the unit

found appropriate. There is no history of collective bargaining affecting any of the employees involved in this proceeding.

The Petitioner seeks to represent a unit comprised of all food service workers and bulk food van drivers, excluding all meals on wheels drivers, nutrition site operators, the stockroom clerk, and all professional employees, guards and supervisors as defined in the Act. In the alternative, the Petitioner, in its brief, contends that a unit confined solely to the food service workers would be appropriate for purposes of collective bargaining. Contrary to the Petitioner, the Employer contends that the smallest appropriate unit must include all of its nutrition employees. Thus, in addition to those employees sought by the Petitioner, the Employer would include all of the meals on wheels drivers, the nutrition site operators and the stockroom clerk. The Employer asserts that the employees in these classifications share a substantial community of interest with the employees sought by the Petitioner that mandates their inclusion in the bargaining unit. Finally, the Petitioner has expressed a willingness to proceed to an election in any unit found appropriate.

The Employer's nutrition operation is funded primarily through federal and State of Ohio grants obtained from the Area Agency on Aging, an agency of the federal government charged with distributing such funds. The Employer also receives some revenues from contributions made through the United Way and other private charitable sources. The Employer provides approximately 1,800 to 2,300 meals daily to senior and disabled citizens in the greater Dayton area. These meals are provided to individuals in their homes through the meals on wheels program or in group settings at approximately 17 locations in Dayton and Montgomery County, Ohio. The group locations, known as congregate sites, are in public and private community buildings such as churches, city recreational facilities, and senior citizens centers. Although a voluntary contribution of \$2 per meal is requested, the record discloses that the vast majority of the meals served by the Employer are provided to senior citizens at no cost to the recipients. Individuals under age 60 may obtain a meal at a congregate site at a cost of \$4.65. Additionally, individuals who are on a waiting list for the meals on wheels program may elect to pay for the meals until such time as they are eligible for the meals at no cost through the charitable and government subsidies received by the Employer. The meals provided by the Employer through the meals on wheels program and at its congregate sites are the same with the exception of about 40 to 60 therapeutic diet meals which are served daily to specific recipients through the meals on wheels program.

The Employer's Director of Nutrition, Chuck Sousa, is in charge of the day-to-day operation of the nutrition department and is responsible for seeking funding sources and preparing proposals to obtain such funding. Assistant Director of Nutrition Marcia Gebhardt reports to Sousa and is the immediate supervisor of Meals on Wheels Supervisor Ron Easley, Congregate/Catering Supervisor Monica Jones and Food Production Coordinator Julia Joyner. Cook Supervisor Loretta White, who is responsible to Joyner, immediately supervises the seven food service workers or cooks. In addition to her supervisory responsibility over the food service workers, Joyner is also the immediate supervisor of the four bulk food van drivers and the stockroom clerk. Easley immediately supervises the 36 meals on wheels drivers, and Jones is immediately responsible for the 13 nutrition site operators (servers). There are several

volunteers who serve as nutrition site operators and meals on wheels drivers. The parties agree, and I find, that the volunteers would not be included in any unit found appropriate.

The same labor relations policies apply to all of the Employer's employees. In this connection, an employee handbook applies to all of the hourly paid employees in the nutrition department. All employees in the classifications involved in this proceeding are paid a beginning wage of \$5.85 an hour, serve a 90-day probationary period and are eligible to receive the same benefits, including medical and dental coverage, life insurance and long-term disability insurance, a pension plan and a deferred compensation plan. Additionally, all employees are subject to the same disciplinary procedure, are provided with the same annual job performance evaluations and may avail themselves of the same employee grievance procedure. Full-time employees also receive holiday pay, paid vacations and sick leave. At this time, however, only two employees are full time, the stockroom clerk and one of the food service workers. Part-time employees do not receive paid holidays and vacations. However, part-time employees are eligible for a perfect attendance bonus of 75 cents an hour if they have perfect attendance during a bi-weekly pay period. Food service employees wear white uniforms; van drivers wear brown jackets and pants and a striped shirt; servers wear smocks; and the meals on wheels drivers wear a baseball cap containing the name of the Employer. Finally, all of the hourly employees in the nutrition department receive training in sanitation, portion control and universal precautions.

#### **FOOD SERVICE WORKERS (COOKS):**

Joyner and White open the food service operation at about 6 a.m. each weekday. The part-time food service workers (cooks), are scheduled to report to work between 6 a.m. and 8 a.m. and work for 6 hours. It appears from the record, however, that they regularly work somewhat over 6 hours a day. The single full-time food service worker reports to work at 6 a.m. and works until 2:30 p.m. with a half hour break for lunch. A daily meal preparation assignment for each food service worker is posted on a bulletin board by White's desk in the kitchen. Food service workers are assigned to one of four different food preparation tasks: meat, vegetable, potato or breads and fruits. The food service worker or workers assigned to breads and fruits is also responsible for the preparation of the therapeutic diet meals, including dipping, sealing and color coding those meals based on the dietary specifications.

After clocking in, the food service workers begin to prepare the daily meal. In many instances, this involves merely opening containers and heating and defrosting prepackaged food items. On occasion, a recipe must be followed to prepare a food item. The Employer's recipes are standardized in portions of 100 and the exact ingredients must therefore be determined based on the number of portions being prepared. There is conflicting record testimony as to whom is responsible for breaking down recipes so that the appropriate amount of each ingredient is used. However, it appears that when the food service workers themselves perform this task, they rely on calculators to aid them in their work and if they encounter any difficulty in making the calculations, they may seek assistance from White or Joyner. The Employer does not formally train food service employees in the performance of this function. Rather, they are taught to perform this task on the job with assistance from co-workers and supervisory personnel. Indeed, prior food service employment is not a prerequisite for employment with the Employer as a food service worker.

When the prepared food has been fully cooked or heated, the food service workers, based on previous instructions, place the food in pans which are, in turn, placed in warmers or in the oven if there is insufficient room in the warmers. The food service workers then push some of the warmers into the kitchen extension, a tiled floor room adjacent to the kitchen. The meals on wheels drivers then dip or apportion the food from the pans into individual serving trays. Some of the panned food is taken from the warmers or the oven by the bulk food van drivers who then deliver the food to the individual congregate sites in water heated pan holders (cambros).

In addition to the duties described above, the food service workers are responsible for the sanitation and cleaning of food preparation areas and for the washing of pots and pans. Moreover, food service employees, in the afternoon, dip or apportion individual meals, seal them and place them in freezers for later delivery to those individuals who receive meals on weekends.

Food service workers attend weekly meetings conducted by White and monthly meetings conducted by White and Joyner. The monthly meetings are also attended by the stockroom clerk and the bulk food van drivers. There is no indication in the record that any of the food service workers have permanently transferred to other positions within the nutrition department. However, one food service worker transferred from the position of bulk food van driver.

#### **BULK FOOD VAN DRIVERS:**

The Employer employs four bulk food van drivers who utilize vehicles provided by the Employer to deliver meals in bulk to the Employer's congregate sites. All four of the van drivers previously worked as meals on wheels drivers. The van drivers report to work at the Employer's main facility at about 6 a.m. and work until about 12:30 p.m. The van drivers clock in and then begin their work day by loading milk into coolers for delivery to the congregate sites as well as for delivery at residences by the meals on wheels drivers. The type and quantity of milk needed for each route is set forth on computer printout sheets that are used by the van drivers in the performance of this task. The van drivers then load pans of food onto cambros, place the cambros in the vans and deliver them to the congregate sites. When they arrive at the congregate sites, van drivers drop off the food and may assist the site operators (servers) by loading the pans into steam tables. The van drivers also deliver and pickup any paperwork needed or completed by the congregate site servers, including their timesheets and paychecks. After making their deliveries, the van drivers return to the main facility and clean and sanitize their pans and put them away.

Although the Employer employs four van drivers, it has only three van routes. Thus, when all four of the van drivers are scheduled to work, the Employer may use the "extra" van driver to perform a variety of tasks, including functioning as a meals on wheels driver, assisting in the kitchen and assisting the stockroom clerk by storing incoming supplies and moving existing stock from one location to another.

#### **STOCKROOM CLERK:**

The stockroom clerk is responsible for receiving and taking inventory of food and other supplies, reporting the inventory to Joyner and apprising her of the need to replenish stock. Additionally, the stockroom clerk drives a van at least occasionally and works as a meals on wheels driver when the need arises. It is not clear from the record how often the stockroom clerk performs driving and food delivery duties.

### **MEALS ON WHEELS DRIVERS:**

The meals on wheels drivers begin their work day between 7:30 a.m. and 8:30 a.m. Three of the meals on wheels drivers work with the stockroom clerk to assemble the frozen meals that are needed for the day to service the meals on wheels routes as well as for the bulk food van routes. This task is performed in the kitchen extension area and is referred to as frozen food pack out. Other meals on wheels drivers are responsible for the cold food pack out in the same area. The cold food pack out involves bagging bread and fruit into appropriate portions and may also include dipping or apportioning other items such as pineapple chunks or pudding. Work on the frozen food and cold food pack out lines typically conclude between 9:30 a.m. and 10:00 a.m. and the meals on wheels drivers then concentrate on the hot food pack out. This is the food that has been heated or cooked by the food service workers and placed in large pans in warmers. The meals on wheels drivers working together dip or apportion the hot food onto individual trays. The trays are then sealed with a machine known as a lidder and are counted out for each route.

Some of the meals on wheels routes are as much as 120 miles in length and take up to 3-1/2 hours to complete while the shortest routes take only about an hour. Some of the routes service fewer than 25 recipients while others serve more than 40 individuals, with the average route having about 35 deliveries. The meals on wheels drivers with the longest routes leave the main facility first and those who have shorter routes remain to clean up the pack out lines, re-sanitize the preparation areas, sweep up, carry pans back into the kitchen and put away unused stock items that have been left out. They then make their deliveries.

Unlike the van drivers, meals on wheels drivers use their personal vehicles to make deliveries. The Employer reimburses them for mileage and for parking expenses incurred from parking near the main facility. At least two of the meals on wheels drivers will soon be driving company vehicles with temperature control that the Employer has purchased for the purpose of ensuring the integrity of meals on the longer routes.

When the meals on wheels drivers return from making their deliveries, they re-sanitize their equipment, wipe out the coolers, store their equipment and check in to report if all of their patrons were home and if there were any concerns about their well-being. The meals on wheels drivers also occasionally dip or apportion some of the extra meals that the Employer prepares each day for freezing. Recipients who qualify for these meals will then receive them for their use over the weekend. Meals on wheels drivers also occasionally perform or assist the food servers in performing a variety of ancillary kitchen tasks such as washing pots and pans, opening cans and taking out the garbage.

### **NUTRITION SITE OPERATORS (SERVERS):**

The Employer employs approximately 13 servers at its congregate sites. There are two servers at the main facility and one at 11 of the Employer's other congregate sites. The remaining congregate sites are apparently staffed completely by volunteers. Congregate/Catering Supervisor Jones visits each congregate site at least quarterly and more frequently as needed. In this regard, Jones may occasionally substitute for absent servers. The Employer previously employed three of the servers as meals on wheels drivers.

The hours of work each day for the servers vary depending largely on when meals are scheduled to be served at their respective sites. However, they typically work a 4-hour day, Monday through Friday, from 9 a.m. to 1 p.m. or from 10 a.m. to 2 p.m. If there is a special event they work longer hours. The servers receive the pans of food from the van drivers. They then check the temperature of the food and make any necessary adjustments. The site operators then dip the food onto individual trays and serve it to senior recipients. Lunch is usually served for an hour and the servers then clean and sanitize their equipment and serving areas.

With the exception of the two servers at the main facility, the congregate site servers have contact only with the van drivers. As noted, the van drivers exchange paperwork with the servers and may assist them by placing pans into steam tables. The servers at the main facility have substantially greater contact with other nutrition employees primarily by virtue of their close proximity to them. Additionally, the main facility servers occasionally assist meals on wheels drivers by dipping food and servers may clean the work stations of the meals on wheels drivers if they are running late for food deliveries.

### **ANALYSIS AND CONCLUSION:**

In considering the composition of the unit, I am mindful that the Act does not require that a unit for bargaining be the only appropriate unit, or even the most appropriate unit. *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950). The Act requires only that a unit be appropriate for the purposes of collective bargaining. *National Cash Register Co.*, 166 NLRB 173 (1967). Moreover, the unit sought by the petitioning union is always a relevant consideration. *Overnite Transportation Co.*, 322 NLRB 723 (1996); *The Lundy Packing Company, Inc.*, 314 NLRB 1042, 1043 (1994); *Dezcon, Inc.*, 295 NLRB 109 (1989). However, a labor organization's desire as to the appropriate unit is not dispositive. Indeed, Section 9(c)(5) of the Act specifically prohibits the Board from establishing a bargaining unit solely on the basis of extent of organization. See, *Overnite Transportation Co.*, supra. Accordingly, the appropriateness of any given unit must turn on an examination of the degree of community of interest shared by the employees in issue.

The Board examines a variety of community of interest criteria in determining the appropriateness of any given unit. Such criteria include the degree of integration of an employer's operations; common supervision or the lack thereof; similarities in wages, benefits, hours and working conditions among the employees in issue; overlapping of job functions between various employee groupings; distinctions in skills and functions of particular employee groupings; and employee transfers, interchange and contacts. See, *Brand Precision Services*, 313 NLRB 657 (1994); *Atlanta Hilton & Towers*, 273 NLRB 87, 90 (1984). In reaching my

determination as to the composition of the unit, I have applied the criteria relied upon by the Board to the facts in the subject case.

The Employer employs four principal groups of employees, vis-a-vis, food service employees, van drivers, meals on wheels drivers and servers. There is also a single storeroom clerk. The meals on wheels drivers, the servers and the food service employees all have separate immediate supervision from the other employee groups. The van drivers and the stockroom clerk, who also drives a van on occasion, share the same immediate supervision. However, the second level supervision for all of the employees in the nutrition department is consolidated in Marcia Gebhardt, the Employer's assistant director of nutrition. Additionally, it appears that on some occasions White supervises all employees who are working in the vicinity of the kitchen at the main facility. In considering the issue of common supervision, I note that, with the exception of White, the immediate supervisors of the different employee groups apparently share an office adjacent to the kitchen. White has a desk in the kitchen itself.

With regard to wages, benefits, hours and working conditions, the various employee groups share many of the same attributes. Thus, they earn the same beginning wage and serve the same probationary period which may be extended by 30 days. They also share nearly all of the same benefits. The only significant distinction in benefits is that the full-time employees, of which there are only two, receive paid holidays and vacations, and the part-time employees are eligible for a perfect attendance bonus. The fact that the meals on wheels drivers also receive payment for mileage and parking reimbursement only reflects their use of personal vehicles and is an inconsequential distinction in compensation.

There are some minor differences in the working conditions of the various employee groupings but there is also a great deal of commonality in those conditions. With the exception of the congregate site servers, all employees spend a significant portion of each work day in the vicinity of the main facility kitchen where they perform an array of interrelated tasks from cooking to preparing individual trays and routes for food distribution, to sanitizing and cleaning cooking and preparation areas and equipment. Working conditions for the congregate servers vary in that those servers work at remote locations and have minimal contact with other employees. Additionally, the van drivers and the meals on wheels drivers spend a significant portion of their work day on the road delivering meals to individual residences or to congregate sites.

In addition, there is overlapping of job functions and duties, on a temporary or daily basis, between the various employee groupings. Thus, the servers and the meals on wheels drivers perform the same function in many respects, i.e., they are responsible for delivering meals to the Employer's clients. The meals on wheels drivers and the van drivers also share similar functions as both groups are responsible for transporting the meals to the sites where they are consumed. Additionally, the meals on wheels drivers and the van drivers to a lesser extent also perform some of the duties of the food service workers. Thus, they are involved in apportioning the food, washing pots and pans and taking out the trash. The van drivers and the stockroom clerk occasionally function as meals on wheels drivers and the stockroom clerk occasionally drives a van. None of the positions require prior training or experience and there is little difference in the skill level between the various employee groupings. I note that a driver's license and an

acceptable driving record are necessary to perform driving duties for the Employer. Additionally, the food service workers are expected to learn how to break down recipes so that the proper amounts of ingredients are used in the preparation of the required number of portions. However, calculators and supervisory assistance are provided to them to facilitate the acquisition of this relatively basic skill.

Finally, there has been significant permanent interchange between employees in the various classifications. In this regard, I note that the Employer posts all openings and that any employee may apply for the opening. Indeed, several meals on wheels drivers have become servers and all the van drivers were formerly meals on wheels drivers. Moreover, the Employer permitted one van driver to transfer to a food service position when he experienced problems with his operator's license and insurability.

In my opinion, neither the Petitioner's primary nor alternative unit position is supported by the record. Indeed, all the nutrition department employees share an overwhelming community of interest that mandates their inclusion in a single unit. In reaching this conclusion, I note that the employees in the units proposed by the Petitioner are insufficiently distinguishable from the employees whom the Petitioner would exclude in regard to most, if not all, of the community of interest criteria relied on by the Board in making unit determinations. See, *Moore Business Forms, Inc.*, 204 NLRB 552 (1973); *Glosser Bros., Inc.*, 93 NLRB 1343 (1951). I agree with the Petitioner that the Board in *Morand Bros. Beverage Co.*, supra, and *P. J. Dick Contracting, Inc.*, 290 NLRB 150 (1988), held that a petitioning labor organization need seek only an appropriate unit. However, neither unit proposed by the Petitioner, under the circumstances here, constitutes an appropriate unit and the Petitioner has not cited any Board case which supports the appropriateness of either of its proposed units.

Based on the foregoing, the entire record and careful consideration of the arguments of the parties at the hearing and in their briefs, I find that the only appropriate unit must include the Employer's food servers, van drivers, meals on wheels drivers, nutrition site operators (servers) and stockroom clerk, excluding all office clerical employees, confidential employees and all professional employees, guards and supervisors as defined in the Act. *Moore Business Forms, Inc.*, supra. Inasmuch as the Petitioner has expressed a willingness to proceed to an election in any unit, I shall direct an election among the employees in the unit found appropriate.<sup>1/</sup>

#### **STIPULATED SUPERVISION:**

The parties stipulated and the record shows that Sharon Minturn, president; Chuck Sousa, director of nutrition; Marcia Gebhardt, assistant director of nutrition; Ron Easley, meals on wheels supervisor; Monica Jones, congregate/catering supervisor; Julia Joyner, food production coordinator; and Loretta White, cook supervisor, have the authority to hire, discharge or discipline employees or direct their work in a manner requiring the exercise of independent

---

<sup>1/</sup> As the unit found appropriate is broader than that requested, the Petitioner is accorded a period of 10 days to submit the requisite showing of interest to support an election in the appropriate unit. In the event the Petitioner does not wish to proceed to an election in the broader unit found appropriate, it may withdraw its petition, without prejudice, by notice to me within 7 days from the date of this decision.



judgment and are supervisors within the meaning of Section 2(11) of the Act. Accordingly, I shall exclude them from the unit.

Based on the foregoing, the record as a whole and careful consideration of the arguments of the parties at the hearing and in their briefs, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining:

**All food service workers, bulk food van drivers, meals on wheels drivers, nutrition site operators (servers), and the stockroom clerk employed at the Employer's 105 South Wilkinson Street, Dayton, Ohio facility, and at its congregate sites located in the vicinity of Dayton and Montgomery County, Ohio, but excluding all office clerical employees, confidential employees, and all professional employees, guards and supervisors as defined in the Act.**

Accordingly, I shall direct an election among the employees in such unit subject to the Petitioner's timely submission of an adequate showing of interest among the employees in the broader unit found appropriate.

#### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **United Food and Commercial Workers Union, Local 1099**.

#### **LIST OF ELIGIBLE VOTERS**

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters using full names, not initials, and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v.*

*Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB No. 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision 2 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **April 30, 1999**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **May 7, 1999**.

Dated at Cincinnati, Ohio this 23<sup>rd</sup> day of April 1999.

*/s/ Richard L. Ahearn*

Richard L. Ahearn, Regional Director  
Region 9, National Labor Relations Board  
3003 John Weld Peck Federal Building  
550 Main Street  
Cincinnati, Ohio 45202-3271

401-2562  
401-7550  
420-2900  
420-4600  
420-5000